IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 9411 of 2005

M/s Geetanjali Saree Emporium ..Petitioner

vs.

Vijaykumar Laxman Vaidhya
and others ..Respondents

Mr.A.A.Kumbhakoni with Mr.A.M.Kulkarni for petitioner.
Mr.Amit Borkar for respondents.

CORAM: S.C.DHARMADHIKARI J.
30**th October, 2007**

P.C.

1. After the judgment was pronounced Mr.Kumbhakoni appearing for petitioners and Mr.Borkar appearing for respondents mentioned the matter. Upon taking instructions, Mr.Kumbhakoni states that the petitioners would be agreeable to maintain the judgments and decrees of the Courts below and without interfering with the same, the petitioners request for time to vacate and hand over vacant and peaceful possession of the premises in question. Mr.Kumbhakoni states that he has instructions to request for five years time. Thus, execution and enforcement of the decree be postponed is the request made by the petitioner.

2. Mr.Borkar after taking instructions opposes the request of Mr.Kumbhakoni and submits that the respondents will be agreeable at the most for six months period to vacate the premises by the petitioners.

3. In the light of the fact that the petitioner does not wish to press the challenge to the judgment and decrees of the Courts below but prays for time to vacate and further decree not being on the ground of bonafide requirement but only under section 13(1)(b), so also the premises being commercial and put to use as saree emporium. It will be difficult for to arrange necessary finances to procure alternate accommodation. The request for time to vacate can be considered also on the ground that petitioner has to clear off a loan liability of Rs.11,00,000/-

4. In the peculiar facts of this case, five years time could be too longer period. Further, within six months alternate arrangement also cannot be made. Taking over all view of the matter and considering the totality of the facts, in my view, interest of justice would be

subserved if time to vacate is granted till 31st October, 2009 on the petitioners' executing undertaking in this Court in the following terms.

i) That the petitioners are in possession of the premises, namely, shop premises on the ground floor at C.S.No.76/1 to 4, Laxman Sadan, B Ward, Kolhapur.

ii) That the suit shop is being put to use by the petitioners as saree emporium and for cloth business only.

iii) That it is only the petitioners who are carrying on business therein and that none else other than the petitioners are carrying on the said business;

iv) That the petitioners will continue to pay the agreed rent till 31st October, 2009 without any default together with such increases as are permissible in law.

v) That the petitioners would not transfer, alienate, encumber, part with possession or create any third party rights so also induct

anybody in the suit shop in any manner whatsoever till 31st October, 2009.

vi) That upon the time expiring the petitioner shall hand over vacant and peaceful possession of the shop premise to the respondents.

5. Such undertaking to be filed on or before 15th November, 2007.

6. Needless to state that in default of filing of the undertaking or any of the terms contained in the undertaking, it would be open for the respondents to enforce and execute the decree in accordance with law.

(S.C.DHARMADHIKARI J.)